Supreme Court, U. S.
FILED
MAR 19 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

NO. 75-957

JERRY EVANS, FRED HERMAN, and LARRY BERG,

Plaintiffs,

v.

LYNETTE ALICE FROMME and E. RICHARD WALKER,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1975

No.

JERRY EVANS, FRED HERMAN, and
LARRY BERG, Petitioners,

vs.

LYNETTE ALICE FROMME and
E.RICHARD WALKER, Respondents

RESPONSE TO PETITION FOR A
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Respondents, LYNETTE ALICE FROMME and E. RICHARD WALKER, Respondents below, respectfully pray that Writ of Certiorari be denied.

STATEMENT OF THE CASE

On September 10, 1975, indictment Criminal No. S 75-451 was filed in the United States District Court for the Eastern District of California, charging LYNETTE ALICE FROMME with a single violation of Title 18, United States Code, Section 1751(c), Attempted Assassination of the President of the United States of America. The offense carries a maximum punishment of imprisonment for any term of years or for life. Miss Fromme entered a plea of not guilty and the case was set for jury trial on November 4, 1975.

On October 10, 1975, LYNETTE ALICE FROMME and her then co-counsel, E. RICHARD WALKER, Federal Defender, Eastern District of California, filed a complaint for Injunctive Relief with

the District Court for the Eastern District of California naming Robert Henrickson, Robert Hendrickson Productions, and Toban International Releasing, as defendants. Among other things, the complaint alleged that the defendants were the owners and distributors of a film entitled "Manson." 1/ The complaint also alleged on information and belief that the defendants would be advertising, distributing, exhibiting, and otherwise making the film, "Manson" available for public and private viewing in the counties located in the Eastern District of California and that if the defendants were not restrained from so doing, LYNETTE ALICE FROMME would be denied her right to a fair trial by an impartial jury, free from outside influences and irreparable

1/ Complaint, p. 3, paragraph 7

harm would be inflicted upon the plaintiffs. 2/

On October 17, 1975, the Honorable Thomas J. MacBride, Chief Judge, Eastern District of California, viewed the film entitled "Manson." 3/ On the same day at an open hearing, oral argument was waived and the case was submitted by the plaintiffs and by defendant ROBERT HENDRICKSON, who was present without counsel. 4/ The Court then made the finding and granted the injunction attached as Appendix B to Petitioner's brief on file herein.

The injunction was limited geographically to only those twenty-six (26) counties in the Eastern District of California from which the jurors in Miss Fromme's trial should be drawn and it was

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2/ Complaint, pp.3-4, paragraphs 9 and 10
3/ Findings and Injunctive Order, p. 1, attached as Appendix "B" to Petition
4/ Id. at 2

limited to the narrowest possible time span in that the order was to remain in effect until the jury in United States v. Fromme, Criminal No. S 75-451, was sequestered or if not sequestered, then until such time as a verdict was reached.

The jury was sequestered in United States v. Fromme, on November 7, 1975 which extinguished the injunction three (3) weeks after it was granted.

The Respondents do not dispute Petitioner's statement of the case as it pertains to the standing of the Petitioners and the procedure followed by Petitioners in the lower courts.

REASONS FOR DENYING THE WRIT

I.

THE ISSUES IN THE CASE AT BAR ARE MOOT AND THE WRIT SHOULD BE SUMMARILY DENIED

On November 7, 1975, the injunction complained about was extinguished.

Since that time, there have been no adverse parties and no case or controversy. Under the doctrine of Mills v. Green, 159 U.S. 651, 16 Sup.Ct. 132, 40 L.Ed. 293 (1895), the issues are now moot. The United States Court of Appeals for the Ninth Circuit so found. 5/ Respondents urge this Honorable Court to summarily deny the Writ.

The Petitioners, on pages 17, 18, 19, and 20 of the Petition, urge the Court to grant certiorari regardless of the mootness question because, they contend, the injunction is a "short term order capable of repetition yet evading review." Respondents agree that the injunction is a short term order but disagree that it is capable of repetition. The factual situation surrounding that

5/ Order of the Ninth Circuit Court of Appeals attached to Petition as Appendix A

order is so unique that the chances of repetition are much too remote for this Court to spend its valuable time considering a moot question. The defendant in United States v. Fromme was a member of the well publicized "Manson Family." The alleged victim was the President of the United States. The crime with which Miss Fromme was charged carried a maximum punishment of life imprisonment. Strangely enough, at the same time that Miss Fromme was about to go on trial, a movie, in which she was a star, was being considered for showing in the very area from which Miss Fromme's jurors were to be chosen. Chief Judge MacBride, after viewing the movie, found it to be extremely prejudicial and posed a serious and imminent threat to the Court's ability to give the defendant a fair, impartial and speedy trial. Jury selection would

already be difficult because of the nature of the case; the nature of the "Manson Family"; the President; and the sequestering of the jury.

Facts such as these will likely never occur again. As Chief Judge MacBride told the Petitioners at the hearing on their motion to reconsider and vacate the injunction:

> "You say this is a monstrous decision on my part. I don't look upon it as such. I look upon it as a case, an individual case, as Mr. Walker has pointed out, extremely unique. It's a case the likes of which I hope will never happen again in the history of the United States, never. 6/

Because of the uniqueness of the case, the trial Court's order could not be used as general authority for anything. This is a once in a lifetime case which

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6/ Transcript of Hearing, Oct. 30, 1975 p. 7

is, under the unique facts, poor precedent for any proposition of law.

II.

THIS COURT SHOULD DENY CERTIORARI BECAUSE THE TRIAL COURT APPLIED THE CORRECT STANDARD AND THE LIMITED INJUNCTION WAS BOTH NECESSARY AND PROPER UNDER THE PECULIAR CIRCUMSTANCES OF THE CASE OF UNITED STATES v. FROMME, CRIMINAL NO. S 75-451

In cases where the right to a fair trial comes in conflict with First Amendment freedoms, the right to a fair trial must be given preference. Sheppard v. Maxwell, 384 U.S. 333, 86 Sup. Ct. 1507, 16 L.Ed.2d 600 (1966); United States v. Tijerina, 412 F.2d 661, 667 (10th Cir.), Cert. denied 396 U.S. 990 (1969); Estes v. Texas, 381 U.S. 532, 85 Sup.Ct. 1628, 14 L.Ed.2d 543 (1965).

The trial court balanced the First Amendment Right to free press and

free speech with Miss Fromme's Sixth Amendment right to a speedy and fair trial and properly applied the serious and imminent threat standard:

> "I know that I must find, as you pointed out in your memorandum, that there is a serious and imminent threat to the Court's ability to give this defendant a fair, impartial and speedy trial before I can suppress the movie. Maybe I didn't state that as clearly as I should have in my original opinion, but I do here and now so state, I find that the showing of the movie in the twenty-six counties being served by this district would pose such a serious and imminent threat to the possibility of her getting a fair trial and to our bringing this case to justice in a speedy and proper fashion, that this is a case where it is necessary, as I stated in my opinion, that your client's First Amendment Rights must be subordinated to her Sixth Amendment Rights." 7/

7/ Transcript of Hearing, Oct. 30, 1975, pp. 11 and 12

The trial Court considered voir dire as an alternative but rejected it because of the particular circumstances of the case. 8/ After weighing all of the alternatives and factors in the case, Chief Judge MacBride found that the limited injunction was the least onerous way to protect Miss Fromme's right to a speedy and fair trial.

It may have caused some slight inconvenience to prospective movie goers (the movie was shown in other areas of the State) for a short time but it was reasonable and necessary under the circumstances. The movie has been shown in this area depicting Miss Fromme in some of the movie advertisements. The limited inconvenience to the First Amendment Right to receive information was justified by

8/ Transcript of Hearing, Oct. 30, 1975, p. 13

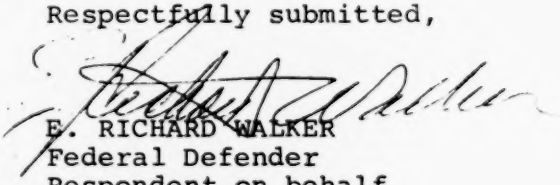
the protection of the Sixth Amendment Right. The case is over; it was expedited. The Writ should be denied.

CONCLUSION

For the aforementioned reasons, respondents respectfully pray that the Court deny a writ of certiorari to review the judgment below.

DATED: March 11, 1976

Respectfully submitted,



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